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**From:**

**Sent:** Tuesday, August 10, 2010 2:01:22 PM

**To:**

**Cc:**

**Subject:** FW: IRC 3121(d)

Hi

Thank you for your question. I am sorry that I could not get back to you last week, but I was attending our conference in Chicago. I hope the following information will be helpful to you, but if not, please let me know. The first step would be to determine if the district manager is a common law employee. Under the common law standard, the question is whether the person for whom services are performed has the right to control and direct the individual who performs the services, regarding not only the result but also the details and means. If the manager is a common law employee under this standard, then the manager cannot be a statutory employee or an independent contractor and your inquiry ends. If the firm did not check box 13 statutory employee on the W-2 and withheld federal income tax from payments to the manager, those are potential facts favorable toward common law employee status. I am not specifically aware of a case or ruling concerning the employment status of a district manager, but you should check further. If you would like me to help assist with this search please let me know.

If you determine that the district manager is not a common law employee, then he is either an independent contractor or a statutory employee.

See Reg 31.3121(d)-1(d)(3)(ii), T.C. Summ Op 2006-125, and Rev. Rul 59-103 for some general authority as to who a full time life insurance salesman is in order to qualify for treatment as a statutory employee. A statutory employee may claim deductions related to his income on Schedule C and reports FICA tax rather than self employment tax. However, it seems unlikely that a district manager can establish that he satisfies the statutory employee test for being a full-time life insurance salesman whose entire or principal business activity is devoted to the solicitation of life insurance or annuity contracts, or both, primarily for one life insurance company.